Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Connecticut	)	PR Docket No. 94-106
Department of Public Utility	)	
Control to Retain Regulatory	)	
Control of the Rates of Wholesale	)	
Cellular Service Providers	)	
in the State of Connecticut	)	

To: The Commission

OPPOSITION TO MOTION FOR STAY

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys and pursuant to Section 1.45 of the Commission's rules, hereby opposes the Motion for Stay ("Motion") of the Connecticut Department of Public Utility Control ("DPUC") and the Attorney General of Connecticut (collectively "Connecticut"), in the above-captioned proceeding. Connecticut asks for a stay of the FCC's order denying the DPUC's petition to retain regulatory authority over the rates of wholesale cellular service providers in Connecticut.[1/] Because Connecticut has failed to satisfy the requirements necessary to justify a stay, its Motion should be denied.[2/]

[1/] Report and Order, PR Docket No. 94-106 (released May 19, 1995)("Order").

[2/] It is also questionable whether the FCC has authority to grant the relief requested by Connecticut. When the state failed to file a timely petition for reconsideration, by the terms of the statute, the Order became effective and the DPUC lost its authority to regulate rates. See 47 U.S.C. § 332(c)(3)(B) (if a state files a petition, its existing regulation shall remain in effect "until the Commission completes all action (including any

A party seeking a stay must show that it has a strong likelihood of succeeding on the merits, it will suffer irreparable harm absent the grant of a stay, interested parties will not be harmed if the stay is granted, and the public interest favors the requested relief.[3/] Connecticut fails on all counts.

Connecticut has virtually no likelihood of prevailing on the merits of its appeal. At the outset, Connecticut fails to recognize that Section 332(c)(3) imposed a "substantial hurdle" on the DPUC to justify continued regulation of CMRS rates and that the DPUC failed to meet this burden. In preempting state authority over CMRS rates, Congress sought "[t]o foster the growth and development of mobile services, that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure . . . ."[4/] Lawmakers recognized that a patchwork of inconsistent state regulation would undermine the growth and development of mobile services.[5/]

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reconsideration) on such petition"). The FCC now has no power to reimpose the DPUC's regulatory authority without following the procedures outlined in the statute.

[3/] Cuomo v. United States Nuclear Regulatory Commission, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metro. Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977); Virginia Petroleum Jobbers Assn v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

[4/] H.R. Rep. No. 111, 103d Cong., 1st Sess. 260 (1993) ("House Report").

[5/] See H.R. Rep. No. 213, 103d Cong., 1st Sess. 490 (1993) ("Conference Report") (intent of revised Section 332 is to "establish a Federal regulatory framework to govern the offering of all commercial mobile services") (emphasis supplied); see also

To further the legislative objectives of uniformity and the growth and development of mobile services, the Commission properly established a strong presumption against granting state petitions for authority to regulate commercial mobile services, including cellular services. Congress deliberately chose "generally to preempt state and local rate and entry regulation of all commercial mobile radio [6] The DPUC completely failed to make the showing necessary to retain regulatory authority over intrastate cellular rates and the Commission's denial of its petition was entirely appropriate.

Connecticut also is incorrect in asserting that the Commission changed the standard for assessing state petitions. The Commission made clear that states could "submit whatever evidence the state believes is persuasive regarding market conditions in the state and the lack of protection for CMRS subscribers in the state."[7] The DPUC followed this advice explicitly and submitted reams of so-called "evidence."

Connecticut now complains that the Commission considered types of evidence not specifically listed as being "pertinent to [the FCC's] examination of market conditions and consumer

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id. at 494 ("[T]he Commission, in considering the scope, duration, or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection . . . ").

[6] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1504 (1994) (emphasis supplied).

[7] Id. at ¶ 252.

protection." This argument is disingenuous. Plainly, the degree of investment by carriers in CMRS facilities, as well as the present impact on the market by the future entry of PCS are subsumed within the factors listed by the Commission (e.g., rates of return, annual revenues, instances of anti-competitive or discriminatory practices). Moreover, as noted above, the Commission gave states the discretion to provide whatever information they deemed relevant. If carriers had been failing to reinvest profits in wireless facilities, it seems inconceivable that the DPUC would not have mentioned such a fact.

Contrary to Connecticut's allegations, the Commission did not ignore the DPUC's analysis of the impact of the entry of PCS. It simply did not agree with the DPUC's conclusion that near-term entry of competition was having no present effect on cellular rates.

Finally, the FCC did not erroneously discount the DPUC's "evidence" of discriminatory behavior by cellular carriers. Indeed, the Commission correctly stated that the DPUC had presented "no evidence of systematically collusive or other anticompetitive practices concerning the provision of any CMRS." Notably, as the Commission recognized, "the DPUC itself" has been unable to find through its own investigations that market conditions fail to protect consumers.[8/] Thus, there is substantially no likelihood that Connecticut will be able to succeed on the merits of its appeal here.

[8/] Order at ¶ 68.

Connecticut also cannot show that it or the public interest will suffer irreparable harm by failure to grant its Motion. While Connecticut generally alleges that consumers might be harmed as a result of its lack of oversight, significantly, the state does not claim that rates will rise. Entirely speculative allegations of harm such as this are insufficient to warrant grant of a stay.

Moreover, as noted previously, the public interest is better served by the regulatory forbearance embodied in the statute and the Second Report and Order. Congress specifically chose a consistent and coherent national regulatory framework for mobile services and the anachronistic regulation proposed by the DPUC is inconsistent with these goals. The Commission has recognized that consumers will be better served by allowing state regulation only in extreme cases. This is not such a case.

For the foregoing reasons, Connecticut's Motion should be denied.

Respectfully submitted,

MCCAW CELLULAR COMMUNICATIONS, INC.

Cathleen A. Massey by SFS

Scott K. Morris
Senior Vice President - External Affairs
Cathleen A. Massey
Vice President - External Affairs
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036
202/223-9222

Howard J. Symons
Sara F. Seidman
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Of Counsel

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CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that a copy of the foregoing Opposition to Motion to Stay was delivered by first-class mail, postage prepaid on this 21st day of July, 1995, on the parties listed below:

Mark F. Kohler
Assistant Attorney General
Office of the Attorney General
One Central Park Plaza
New Britain, CT 06051

Philip Rosario
Assistant Attorney General
Office of the Attorney General
One Central Park Plaza
New Britain, CT 06051

Paul E. Knag
Charles D. Ray
Cummings & Lockwood
City Place I
Hartford, CT 06103

Jean L. Kiddoo
Swidler & Berlin
Suite 300
3000 K Street, N.W.
Washington, D.C. 20007-5116

Phillip Rosario
Assistant Attorney General
State of Connecticut
One Central Park Plaza
New Britain, CT 06051

Michael F. Altshul
CTIA
Suite 200
1250 Connecticut Avenue., N.W.
Washington, D.C. 20036

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Thomas Gutierrez
Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Alan R. Shark
President
American Mobile Telecommunications Association
1150 8th Street, N.W.,
Suite 250
Washington, D.C. 20036

Office of Consumer Counsel
State of Connecticut
136 Main St., Suite 501
New Britain, CT 06051-7760

Mark J. Golden
Acting President
Personal Communications Indus. Assoc.
Suite 1100
1019 Nineteenth St., N.W.
Washington, D.C. 20036

Joel H. Levy
Cohn and Marks
Suite 600
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036

Robert B. Kelly
Kelly & Povich
Suite 300
1101 Thirtieth St., N.W.
Washington, D.C. 20007

Leonard J. Kennedy
Dow, Lohmes & Albertson
1255 23rd St., N.W.
Washington, D.C. 20037

Joseph Mazzarella
Connecticut Telephone &
Communication Systems, Inc.
1269 South Broad St.
Wallingford, CT 06942

James T. Scott
Crowell & Moring
1001 Pennsylvania Avenue
Washington, D.C. 20554

Robert P. Knickerbocker
Day, Berry & Howard
City Place I
Hartford, CT 06103

Thomas P. Ryan
Pirro & Church
120 East Ave., 2nd Floor
Norwalk, CT 06852

Russell H. Fox
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Douglas B. McFadden
McFadden, Evans & Sill
1627 Eye St., N.W.
Suite 810
Washington, D.C. 20006

Peter J. Tyrell
Springwich Cellular Limited
Ptshp.
227 Church Street
Room 1021
New Haven, CT 06510

Tanya Butler

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